



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

UAM 17 2014

OFFICE OF WATER

Ms. Kristy A. N. Bulleit
Hunton & Williams, LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037-1701

RE: Freedom of Information Act Request EPA-HQ-2013-009348

Dear Ms. Bulleit:

This letter is in response to your Freedom of Information Act request dated August 19, 2013, to the U.S. Environmental Protection Agency requesting records pertaining to the EPA's initiation of Endangered Species Act Section 7 consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (collectively, the "Services") concerning the EPA's final regulation to establish requirements for cooling water intake structures at existing facilities under Section 316(b) of the Clean Water Act.

Specifically, you requested:

- "1. Any and all documents, including supporting materials, relating to the formal or informal ESA Section 7 consultation between the EPA and the Services with respect to issuance of the EPA's Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities, including draft and final versions of the Biological Evaluation and any and all documents relating to the effects of the Regulations on threatened and endangered species and critical habitats of threatened and endangered species under the ESA.
2. Any and all "raw data" the EPA collected or provided to the Services in connection with such consultation, including, but not limited to, data on impacts from cooling water intake structures on aquatic threatened and endangered species, aquatic-dependent threatened and endangered species, and critical habitats of listed and threatened species.
3. Any and all raw data the EPA relied on in examining the impacts of cooling water structures and regulatory benefits in the seven aquatic study regions discussed in the BE.

4. Any and all raw data the EPA relied on in identifying current spatial overlap between the locations of cooling water structures subject to the rule and the location of federally designated critical habitats or habitat ranges of threatened and endangered species.
5. Any and all raw data the EPA relied on to assess whether it could estimate the baseline or amount of future reduction in mortality of threatened and endangered species.
6. Any request (other than this letter) from any entity or person for any documents relating to the informal or the formal ESA Section 7 consultation between the EPA and the Services with respect to Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities, and all documents, communications, and records relating to such a request, including any response by the EPA to that request.”

Regarding the first part of your request, the final version of the BE, discussed below in response to the sixth part of your request, contains all information relating to the effects of the CWA Section 316(b) regulation on threatened and endangered species and critical habitats of threatened and endangered species under the ESA. The first and second drafts of the BE, which we are withholding as internal deliberative documents, are the only other documents prepared by the EPA containing detailed information relating to the effects of the CWA Section 316(b) regulations on threatened and endangered species and critical habitats of threatened and endangered species under the ESA. The EPA is withholding deliberative emails, either in full or in part, related to informal and formal consultation that the EPA sent to the FWS, the NMFS, or both, and EPA internal emails. Emails generated by the Services fall within the scope of your FOIA request to those agencies. The withheld emails are listed in the enclosure.

Regarding the second part of your request, as discussed below in response to the sixth part of your request, the EPA released all raw data collected or provided to the Services in connection with the ESA consultation in response to two previous FOIA requests.

Regarding the third part of your request, all raw data files related to examination of impacts of cooling water structures in the seven aquatic study regions discussed in the BE were released by the EPA in response to two previous FOIA requests. The EPA has not examined the ESA-related regulatory benefits in the seven aquatic study regions discussed in the BE other than what was discussed in the March 28, 2011, “Environmental and Economic Benefits Analysis for Proposed Section 316(b) Existing Facilities Rule.”

Regarding the fourth part of your request, as discussed below in response to the sixth part of your request, the EPA released all raw data relied on in identifying current spatial overlap between the locations of cooling water structures subject to the rule and the location of federally designated critical habitats or habitat ranges of threatened and endangered species in response to two previous FOIA requests.

Regarding the fifth part of your request, the EPA has does not have raw data concerning baseline or amount of future reduction in mortality of threatened and endangered species.

Regarding the sixth part of your request, the EPA has received two previous FOIA requests for information related to the formal ESA consultation among EPA and the Services. The first request was from Super Law Group, LLC dated June 21, 2013. The second request was from Sidley Austin, LLP dated July 18, 2013. In response to these requests the EPA released a redacted version of the final BE and all of the raw data files used to compile the BE, which are available at: <https://foiaonline.regulations.gov>.

Please note that information contained in the first and second drafts of the BE that is still deliberative has been redacted pursuant to 5 U.S.C. § 552(b)(5). An itemized list of materials released or withheld, along with the basis for withholding, is provided in the enclosure to this letter.

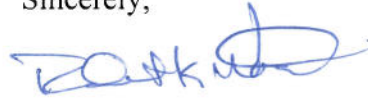
An itemized invoice covering the charge for processing your request is enclosed. Please forward your check or money order, made payable to the U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated. In a continued effort to streamline the FOIA process, the EPA is now offering you the option of paying your FOIA bill online. There is no requirement for you to use the online system to pay your bill, but if you choose to do so please go to www.pay.gov and follow the simple instructions. Please be sure to have your FOIA number available so that the payment can be applied to the correct charge.

This letter and the enclosed information conclude the EPA's response to your FOIA request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days

from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the tracking number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Julie Hewitt at 202-566-1031 or hewitt.julie@epa.gov should you have any additional questions concerning this matter.

Sincerely,



Robert K. Wood, Director
Engineering and Analysis Division

Enclosures

Enclosure

| Brief description | Exemption status |
|--|-------------------------|
| First Draft of ESA Biological Evaluation_3-7-13 | Internal Deliberative |
| Behl to Hewitt Email_7-6-12 | Release |
| Attachment to Behl to Hewitt Email_Redacted_7-6-12 | Release |
| Email from Hewitt to NMFS_Redacted_8-13-12 | Release |
| Map of CWIS with Known Locations_11-6-12 | Release |
| Email from Hewitt to NMFS_Redacted_9-25-12 | Release |
| Email from Hewitt to NMFS_Redacted_11-19-12 | Release |
| 316b Briefing for ESA Webinar_Redacted_11-6-12 | Release |
| Email from Born to NMFS_4-11-13 | Internal Deliberative |
| Email from Born to NMFS_Redacted_9-13-12 | Release |
| Attachment to Born to NMFS Email_9-13-12 | Internal Deliberative |
| Attachment to Born to NMFS Email_9-13-12_Second Attachment | Internal Deliberative |
| EPA 316b T&E Map 1_All Facilities_9-13-12 | Release |
| EPA 316b T&E Map 2_Overlap_9-13-12 | Release |
| EPA 316b T&E Map 3_125 MGD_9-13-12 | Release |
| EPA 316b T&E Map 4_Compliance_9-13-12 | Internal Deliberative |
| Email from Born to NMFS_9-13-12_Second Email | Release |
| Email from Born to NMFS_Redacted_11-7-12 | Release |
| Email from Born to Services_12-17-12 | Release |
| Attachment to Born to Services Email_12-17-12 | Internal Deliberative |
| Email from Born to NMFS_Redacted_1-22-13 | Release |
| Email from Born to Services_Redacted_5-16-13 | Release |
| Second Draft of ESA Biological Evaluation_5-16-13 | Internal Deliberative |
| Email from Born to Services_Redacted_4-16-13_Second Email | Release |
| Attachment to Email from Born to Services_4-16-13_Second Email | Internal Deliberative |
| Email from Born to Services_Redacted_4-16-13 | Release |
| Attachment to Email from Born to Services_4-16-13 | Internal Deliberative |
| Email from Born to NMFS_Redacted_8-14-12 | Release |
| Email from Wood to Southerland_4-9-13 | Internal Deliberative |
| May 15, 2013 one-pager | Internal Deliberative |
| April 3, 2013 Briefing for Acting Administrator | Internal Deliberative |
| Draft Formal Consultation Request Letter | Internal Deliberative |
| Email from Wood to Southerland_6-12-13 | Internal Deliberative |
| Email from Wood to Stoner_4-23-13 | Internal Deliberative |
| April 23, 2013 Briefing for Acting Administrator | Internal Deliberative |
| Email from Wood to Stoner_6-7-13 | Internal Deliberative |